

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff

V.

AUDIBLE MAGIC CORPORATION

Defendant

AUDIBLE MAGIC CORPORATION,

Counterclaim Plaintiff

V.

BLUE SPIKE, LLC, BLUE SPIKE, INC.
and SCOTT A. MOSKOWITZ

Counterclaim Defendants

BLUE SPIKE, LLC,

Plaintiff

V.

WIOFFER LLC, FACEBOOK INC.,
MYSPACE LLC, SPECIFIC MEDIA LLC,
PHOTOBUCKET.COM INC.,
DAILY MOTION INC., DAILY MOTION
S.A., SOUND CLOUD INC.,
SOUND CLOUD LTD., MYXER INC.,
QLIPSO INC., QLIPSO MEDIA
NETWORKS LTD., YAP.TV INC.,
GOMISO INC., IMESH INC., METACAFE
INC., BOODABEE TECHNOLOGIES
INC., TUNECORE INC., ZEDGE
HOLDINGS INC., HARMONIX MUSIC
SYSTEMS INC., BRIGHTCOVE INC.,
COINCIDENT.TV INC., ACCEDO
BROADBAND NORTH AMERICA INC.,
ACCEDO BROADBAND AB,
MEDIAFIRE LLC.

Defendants

Civil Action No. 6:15-CV-00584-RWS-CMC

Civil Action No. 6:15-CV-00585-RWS-CMC

ORDER GRANTING STIPULATED DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a), Plaintiff, Blue Spike LLC, Counter-Defendants Blue Spike Inc., and Scott A. Moskowitz (“Blue Spike entities”) and Defendants Audible Magic Corp., WiOffer LLC, Facebook Inc., Myspace LLC, Specific Media LLC, Photobucket.com Inc., Dailymotion Inc., Dailymotion S.A., Soundcloud Inc., Soundcloud Ltd., Myxer Inc., Qlipso Inc., Qlipso Media Networks Ltd., Yap.tv Inc., GoMiso Inc., Imesh Inc., Metacafe Inc., Boodabee Technologies Inc., Zedge Holdings Inc., Harmonix Music Systems Inc., Brightcove Inc., Coincident.tv Inc., Accedo Broadband North America Inc., Accedo Broadband AB and MediaFire LLC (the “Defendants”) (collectively the foregoing are the “Parties”), have agreed to resolve this litigation and have agreed to stipulated dismissal of the claims, counterclaims and causes of action between them, and it is therefore ordered as follows:

ORDERED, pursuant to stipulation, that the Blue Spike entities and its heirs and assigns agree not to sue Audible Magic again or its customers for making, using, selling, offering for sale or importing an Audible Magic product or service;

ORDERED, pursuant to stipulation, that Audible Magic’s products and services do not infringe and have not infringed any patents owned or controlled by the Blue Spike entities, including but not limited to U.S. Patent Nos. 7,346,472; 7,660,700; 7,949,494; and 8,214,175;

ORDERED, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), that Blue Spike LLC’s patent infringement claims against each and all of the Defendants are dismissed with prejudice;

ORDERED, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), that Audible Magic’s counterclaims against each and all of Blue Spike LLC, Blue Spike Inc., and Scott A. Moskowitz are dismissed with prejudice;

ORDERED, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), that the Defendants’ declaratory judgment counterclaims in this litigation against Blue Spike LLC, if any, are dismissed

without prejudice;

ORDERED, that notwithstanding the foregoing, (1) neither the entry of the stipulated dismissal of Blue Spike LLC's infringement claims nor the dismissal of any of the Defendants' counterclaims or defenses in the above-captioned case shall in any way waive any right of Facebook Inc. or its affiliates, subsidiaries or successors-in-interest (hereafter collectively referred to as "Facebook") to assert the same or similar counterclaims or defenses or to assert any other claim, counterclaims or defenses, in any other litigation between Blue Spike LLC, Blue Spike Inc., Scott A. Moskowitz (or their heirs and assigns) and Facebook, (2) the claim construction order in this case is not binding in any way on Facebook (under the doctrine of claim preclusion, issues preclusion, or any other legal or equitable doctrine) in any other litigation between Blue Spike LLC, Blue Spike Inc., Scott A. Moskowitz (or their heirs and assigns) and Facebook, and (3) the instant dismissal in this case shall have no res judicata or collateral estoppel effect as to any claim, counterclaim, or defense of Facebook in any other litigation between Blue Spike LLC, Blue Spike Inc., Scott A. Moskowitz (or their heirs or assigns) and Facebook;

ORDERED, that any pending motion or other requested relief is denied as moot;

ORDERED, that the parties shall bear their own attorneys' fees, expenses and costs in this litigation;

ORDERED, that the Clerk of the Court shall close the following cases:

- *Blue Spike LLC v. Audible Magic Corp. et al.*, 6:15-cv-584-RWS-CMC, and
- *Blue Spike LLC v. WiOffer, LLC et al.*, 6:15-cv-585-RWS-CMC